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Attorneys for Plaintiff Jeremy Sundheim

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JEREMY SUNDHEIM, a married individual;)	
)	NO.
Plaintiff,)	
v.)	COMPLAINT
)	
JLG INDUSTRIES, INC., a Pennsylvania Corporation,)	DEMAND FOR JURY TRIAL –
Defendant.)	FRCP 38(b)
)	
)	

Plaintiff Jeremy Sundheim, by and through his attorneys of record,
Piskel Yahne Kovarik, PLLC, and Johnson Law Firm, P.C., hereby alleges:

I. PARTIES AND JURISDICTION

1
2 1. Plaintiff Jeremy Sundheim is a married individual who resides
3 in Spokane County, Washington. Mr. Sundheim has done all things
4 necessary to maintain this action.

5
6 2. Defendant JLG Industries, Inc. ("JLG") is believed to be a
7 Pennsylvania corporation and a subsidiary of the publically traded
8 company known as Oshkosh Corporation Company. JLG has its principal
9 place of business in McConnellsburg, Pennsylvania.

10
11 3. Defendant JLG conducts business all across the world and
12 continuously and systematically in the State of Washington. JLG is the
13 world's leading designer and manufacturer of access equipment. Its
14 personnel and products can be found all over the world and in
15 Washington.

16
17 4. The amount in controversy exceeds \$75,000.

18 5. Jurisdiction and venue are proper in this Court.

II. FACTS

19
20
21 6. Plaintiff Mr. Sundheim incorporates by reference the
22 allegations set forth above, as if fully set forth herein.

23
24 7. On October 5, 2013, Mr. Sundheim was in Bainville, Montana
25 working for Pac 4 Coatings and Waterproofing ("Pac 4"). Pac 4 was

1 contracted by Procore to waterproof fracking silos manufactured by Trident
2 Structures. A lift was needed in order to properly perform the contracted
3 work and fully waterproof the upper parts of the silos. Thus, Pac 4 rented a
4 JLG Telescopic Boom Lift, Model 1350SJP (the “Lift”) from United Rentals.

5 8. Defendant JLG is and at all times material hereto was an entity
6 that is in the business of manufacturing equipment. Specifically, but
7 without limitation, Defendant JLG was in the business of manufacturing
8 telescopic boom lifts, including, but not limited to manufacturing the Lift at
9 issue.

10 9. In performance of the Procore contract, Pac 4 directed its
11 employees to travel to Bainville, Montana and commence work. Mr.
12 Sundheim and another Pac 4 employee, Rod Rice, were the two employees
13 that performed the work.

14 10. Prior to operating the Lift, Mr. Sundheim and Mr. Rice
15 performed the necessary pre-operation checks, followed all safety
16 procedures, wore the proper harnesses, and were properly “tied-off.” After
17 following the necessary safety procedures, Mr. Sundheim and Mr. Rice
18 began to perform work from the Lift.

19 11. While Mr. Sundheim and Mr. Rice were extended up in the
20 Lift’s operations basket, it failed to respond to the controls. In particular,
21 when the boom was commanded to go up, it would suddenly and
22 inexplicably extend out 5 to 6 feet. When commanded to go down, the
23 boom would have similar, but opposite effects. This malfunctioning caused
24 the Lift to jerk, swing, bounce, and make unexpected “hard stops.” The
25 jerking and bouncing of the basket whipped Mr. Sundheim and Mr. Rice in

1 such a manner that it was difficult for each of them to keep their balance,
2 even while gripping the basket with both hands and being properly
3 harnessed.

4 12. Mr. Sundheim and Mr. Rice ultimately became stranded in the
5 lift. Because they were not able to do a system reset, a call was made from
6 the basket, and they spoke with United Rentals' technician.

7 13. United Rentals' technician was not able to troubleshoot the Lift
8 over the phone, so another technician from United Rentals was dispatched
9 to the site. After some time, Mr. Sundheim and Mr. Rice were able to get
10 the lift back on the ground, which was approximately the same time United
11 Rentals' technician arrived on site.

12 14. When United Rentals' technician arrived, he requested to
13 recreate the issues experienced by Mr. Sundheim and Mr. Rice, and thus
14 joined Mr. Sundheim and Mr. Rice in the basket as it was raised up. Within
15 minutes, the Lift malfunctioned again, exhibiting the same issues previously
16 described.

17 15. After troubleshooting the lift and going back and forth to the
18 jobsite several times over a couple of days, the United Rentals' technician
19 contacted Defendant JLG in an effort to determine the issue with the Lift.
20 Defendant JLG advised the technician that there was a bad boom sensor in
21 the control panel, which needed to be replaced.

22 16. During the repair, the technician was required to call Defendant
23 JLG's hotline and obtain specific instructions on how to replace the sensor.
24 Defendant JLG did not inquire as to the technician's credentials or
25 certifications and failed to properly instruct the technician on how to

properly replace the boom sensor. Nonetheless, after Defendant JLG's specific instruction on how to repair the Lift, the technician advised Mr. Sundheim and his crew that the Lift was operational.

17. Upon receiving word that the Lift had been fixed, Mr. Sundheim and Mr. Rice, performed the necessary safety check, properly harnessed themselves, placed themselves in the basket, and proceeded to raise the basket in the air to perform their work.

18. The controls again became unresponsive and unpredictable. The basket would slam into the jib, even when using the slowest speed. The Lift also continued to jerk and stop uncontrollably. These actions caused Mr. Sundheim to be whipped and thrown into the metal rail on the basket several times causing injury to and extreme pain in his right hip. Upon the Lift malfunctioning again, Mr. Rice immediately, but not without continued struggle, got the Lift back on the ground.

19. As a result of this incident, Mr. Sundheim suffered and continues to suffer substantial harm, injury and damages.

III. CAUSES OF ACTION

FIRST CAUSE OF ACTION **(Negligence)**

20. Plaintiff Mr. Sundheim incorporates by reference the allegations set forth above, as if fully set forth herein.

21. Defendant JLG owed Mr. Sundheim a duty of reasonable care.

1 22. Defendant JLG breached the duty to use reasonable care and
2 was negligent, including, but not limited to the following ways: failure to
3 properly instruct the technician on how to replace a boom sensor, failure to
4 inquire as to the technician's training, certification and credentials and
5 determine if he had the experience necessary to properly replace the boom
6 sensor, and failure to properly manufacture the Lift free from defect.
7

8 23. Such breach has proximately caused Mr. Sundheim significant
9 harm, injury and damages in an amount to be proven at trial, plus
10 interest, attorney fees and costs pursuant to equity and applicable law.
11

12 24. The negligence of Defendant JLG's employees occurred within
13 the course and scope of employment.
14

15 25. Defendant JLG is liable for the acts and omissions of its
16 employees under the theory of respondeat superior and vicarious liability.
17

18 **SECOND CAUSE OF ACTION**
19 **(Violation of the WPLA - RCW 7.72 et seq. – Negligence and**
20 **Strict Liability)**
21

22 26. Plaintiff Mr. Sundheim incorporates by reference the
23 allegations set forth above, as if fully set forth herein.
24

25 27. Defendant JLG is an entity that is in the business of
manufacturing products, including, but not limited to the Lift at issue in

1 this case. Thus, it is a product seller and a product manufacturer as
2 defined by the Washington Products Liability Act, RCW 7.72.010.

3 28. Defendant JLG breached the duty to use reasonable care and
4 was negligent, including, but not limited to the following ways: failure to
5 properly instruct the technician on how to replace a boom sensor, failure to
6 inquire as to the technician's training, certification and credentials and
7 determine if he had the experience necessary to properly replace the boom
8 sensor, and failure to properly manufacture the Lift free from defect.
9

10 29. Such negligence by Defendant JLG has proximately caused
11 Mr. Sundheim significant harm, injury and damages in an amount to be
12 proven at trial, plus interest, attorney fees and costs pursuant to equity
13 and applicable law.
14

15 30. Defendant JLG is strictly liable to Mr. Sundheim because the
16 Lift at issue proximately caused Mr. Sundheim injury and damages as the
17 Lift at issue was not reasonably safe in construction, as it deviated in some
18 material way from the design specifications and/or performance standards
19 of JLG, or deviated in some material way from otherwise identical units of
20 the same product line.
21

22 31. Such strict liability by Defendant JLG has proximately caused
23 Mr. Sundheim significant harm, injury and damages in an amount to be
24
25

1 proven at trial, plus interest, attorney fees and costs pursuant to equity
2 and applicable law.

3 32. The negligence and strict liability by Defendant JLG's
4 employees occurred within the course and scope of employment.

5 33. Defendant JLG is liable for the acts and omissions of its
6 employees under the theory of respondeat superior and vicarious liability.
7

8 **IV. JURY DEMAND**

9 34. Pursuant to FRCP 38, Mr. Sundheim hereby demands a trial
10 by jury in this matter as to all claims and issues so triable.
11

12 **V. PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff Jeremy Sundheim prays for relief against
14 Defendant JLG Industries, Inc. as follows:
15

- 16 1. For damages in the amount to be proven at trial;
17 2. For prejudgment and post-judgment interest, pursuant to
18 applicable law;
19 3. For attorney fees and costs pursuant to statute, equity and
20 other applicable law; and
21 4. For such further relief as the Court deems just and equitable.
22

23 //

24 //

DATED this 27th day of September, 2016.

/s/ Nicholas D. Kovarik
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